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UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

KEITH ANDREWS, an individual,
 TIFFANI ANDREWS, an individual,
 BACIU FAMILY LLC, a California
 limited liability company, ROBERT
 BOYDSTON, an individual, CAPTAIN
 JACK'S SANTA BARBARA TOURS,
 LLC, a California limited liability
 company, MORGAN CASTAGNOLA, an
 individual, THE EAGLE FLEET, LLC, a
 California limited liability company,
 ZACHARY FRAZIER, an individual,
 MIKE GANDALL, an individual,
 ALEXANDRA B. GEREMIA, as Trustee
 for the Alexandra Geremia Family Trust
 dated 8/5/1998, JIM GUELKER, an
 individual, JACQUES HABRA, an
 individual, ISURF, LLC, a California
 limited liability company, MARK

Case No. 2:15-cv-04113-PSG-JEM

[Consolidated with Case Nos. 2:15-CV- 04573 PSG (JEMx), 2:15-CV-4759 PSG (JEMx), 2:15-CV-4989 PSG (JEMx), 2:15-CV-05118 PSG (JEMx), 2:15-CV- 07051- PSG (JEMx)]

DECLARATION OF SHANNON R. WHEATMAN, PH.D., IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Date: November 7, 2016

Time: 1:30 p.m.

Courtroom: Hon. Philip S. Gutierrez

1 KIRKHART, an individual, MARY
2 KIRKHART, an individual, RICHARD
3 LILYGREN, an individual, HWA HONG
4 MUH, an individual, OCEAN ANGEL IV,
5 LLC, a California limited liability
6 company, PACIFIC RIM FISHERIES,
7 INC., a California corporation, SARAH
8 RATHBONE, an individual,
9 COMMUNITY SEAFOOD LLC, a
10 California limited liability company,
11 SANTA BARBARA UNI, INC., a
12 California corporation, SOUTHERN CAL
13 SEAFOOD, INC., a California
14 corporation, TRACTIDE MARINE
15 CORP., a California corporation, WEI
16 INTERNATIONAL TRADING INC., a
17 California corporation and STEPHEN
18 WILSON, an individual, individually and
19 on behalf of others similarly situated,

20
21 Plaintiffs,

22 v.

23 PLAINS ALL AMERICAN PIPELINE,
24 L.P., a Delaware limited partnership,
25 PLAINS PIPELINE, L.P., a Texas limited
26 partnership, and JOHN DOES 1 through
27 10,

28
29 Defendants.

1 I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

2 1. I am the president of Kinsella Media, LLC ("KM"), an advertising and notification
3 firm in Washington, D.C. specializing in the design and implementation of class action and
4 bankruptcy notification programs. My business address is 2001 Pennsylvania Avenue NW, Suite
5 300, Washington, D.C. 20006. My telephone number is (202) 686-4111.

6 2. KM was retained to provide an opinion on whether we can identify and notify
7 Class Members in *Andrews v. Plains All American Pipeline, L.P.* ("Andrews Class").

8 RELEVANT EXPERIENCE

9 3. I have served as a qualified class action notice expert in many major class actions.
10 State and federal courts have accepted my analyses and expert testimony on whether information
11 is effectively communicated to people. My curriculum vitae is attached as **Exhibit 1**.

12 4. I have testified in court as an expert in *State v. Farmer Group Inc.*, No. D-1-GV-
13 02-002501 (D. Ct. Tex., Travis County); *Scharfstein v. BP West Coast Products, LLC*, No. 1112-
14 17046 (Cir. Ct. Ore.); *Spillman v. RPM Pizza, Inc.*, No. 10-349 (M.D. La.); *PRC Holdings, LLC*
15 *v. East Resources, Inc.*, No. 06-C-81 (Cir. Ct. W. Va.); *Guidry v. American Public Life Ins. Co.*,
16 No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish); *Webb v. Liberty Mutual Ins. Co.*, No. CV-
17 2007-418-3 (Cir. Ct. Ark); and *Beasley v. The Reliable Life Insurance Co.*, No. CV-2005-58-1
18 (Cir. Ct. Ark). I have been deposed as an expert in *Hale v. CNX Gas Company, LLC*, No. 10-CV-
19 59 (W.D. Va.) and *Thomas v. A. Wilbert Sons, LLC*, No. 55,127 (18th Jud. Dist. Ct., Iberville
20 Parish).

21 5. I have direct experience with a case with similar class claims, *In re: Oil Spill by*
22 *the Oil Rig "Deepwater Horizon" in the Gulf of Mexico* on April 20, 2010, MDL No. 2179 (E.D.
23 La.) for the Deepwater Horizon Economic and Property Damages Settlement with BP as well as
24 the settlement with Halliburton. Specifically, KM was retained to analyze and review the notice
25 programs in the BP settlement and develop and design the notice program in Halliburton.

26 6. In addition, I have been involved in some of the largest and most complex national
27 notification programs in the country, including: *In re: Transpacific Passenger Air Transportation*
28

1 *Antitrust Litigation*, MDL No. 1913 (N.D. Cal.) (involving millions of international airline
 2 passengers); *In re Katrina Canal Breaches Consolidated Litig.*, No. 05-4182 (E.D. La.)
 3 (settlement obtained for Hurricane Katrina and Rita survivors); *In re Dynamic Random Memory*
 4 *Antitrust Litig.*, MDL No. 1486 (N.D. Cal.) (involving tens of millions of consumers); *In re TFT-*
 5 *LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (involving millions of indirect
 6 purchasers); *Kramer v. B2Mobile, LLC*, No. 10-cv-02722 (N.D. Cal.) (text messaging case
 7 involving tens of millions of consumers); *In re Enfamil LIPIL Mkt'g & Sales Pract. Litig.*, No.
 8 11-MD-02222 (S.D. Fla.) (consumer fraud settlement involving millions of infant formula
 9 purchasers); *Fogel v. Farmers Group, Inc.*, No. BC300142 (Cal. Super. Ct., LA County) (\$455
 10 million settlement involving tens of millions of insureds); *Lockwood v. Certegy Check Services,*
 11 *Inc.*, No. 8:07-CV-1434 (M.D. Fla.) (data theft settlement involving over 37 million consumers);
 12 *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.)
 13 (defective product settlement involving high efficiency furnaces); and many others.

14 7. Courts have admitted my expert testimony on quantitative and qualitative
 15 evaluations of the effectiveness of notice programs, and several courts have commented
 16 favorably, on the record, regarding the effectiveness of notice plans I have done. Selected
 17 judicial comments are included in the attached curriculum vitae.

18 8. My qualifications include expertise in the form and content of notice. For
 19 example, while serving with the Federal Judicial Center ("FJC"), I played an integral part in the
 20 development of the illustrative, "model" forms of notice designed to satisfy the plain language
 21 requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my
 22 doctoral dissertation, *The Effects of Plain Language Drafting on Layperson's Comprehension of*
 23 *Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and
 24 attorneys, both in state and federal courts, the FJC posted the notices at www.fjc.gov.

25 9. I have authored and co-authored articles on notice and due process. I believe
 26 notice and due process depend upon clear communication with the people affected. *See, e.g.,*
 27 Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, in *WORLD*
 28 *CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE CLASS ACTIONS AROUND THE GLOBE*

673-686 (Paul Karlsgodt ed., 2012); Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A HANDBOOK 338-348 (Albert A. Foer & Randy M. Stutz eds., 2012); Shannon R. Wheatman & Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class Notice and Claims Administration*, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF COMPETITION LAW 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*, 18 GEO. J. LEGAL ETHICS 1359 (2005); Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire-to-Inform” Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

OVERVIEW OF CLASS DEFINITION

10. I have reviewed the the *Plaintiffs’ Corrected Consolidated Second Amended Complaint* in the Andrews Class (Filed April 4, 2016, Dkt. 88) and *Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for Class Certification* (“Motion for Certification”).

11. The Motion for Certification defines the class to include four damages subclasses: (1) fisher and fish industry, (2) property owner and lessee, (3) oil industry, and (4) business tourism.

12. The subclasses proposed in Andrews are similar to the groups included in the Deepwater Horizon settlements.

NOTIFYNG CLASS MEMBERS

13. The key question in any notice program is what constitutes “the best notice practicable”? When comprehensive mailing lists of class members exist, direct mail should be the primary method used for notification. When comprehensive mailing lists are unavailable or

1 cannot be compiled through reasonable effort, then “notice by publication will suffice under Rule
2 23(c)(2) and under the due process clause.”¹

3 14. Direct mail can be sent to any individual or business that contacted Defendants to
4 report property or economic losses, or damages to their occupation. In addition, property tax
5 records can be searched to identify property owners, and mailing lists can be purchased from data
6 brokers for businesses that fall under the fish industry, business tourism, and oil industry
7 subclasses. In turn, we can ask these businesses to notify any current or former employee who
8 may have been impacted by the oil spill.

9 15. In addition, the notice that is targeted to the fish industry should include
10 publications that are culturally appropriate to reach Vietnamese, Mandarin, and Spanish speakers.

11 16. Therefore, the best notice practicable in this case would include direct notice to
12 reasonably identifiable Class Members and paid media advertising to reach any unknown Class
13 Members. This mixture of direct notice and paid media was done in the *Deepwater Horizon*
14 notice programs and is routine in class action notification programs and has consistently been
15 upheld by courts as “the best notice practicable.”

16 **CLASS SELF-IDENTIFICATION**

17 17. A well-designed, plain language notice in the Andrews case will provide people
18 with the information they need to identify themselves as Class Members.

19 18. In my opinion, the subclasses are well-defined through objective criteria that
20 people can use to determine whether they are impacted by the class action.

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¹ *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993) (citing *Mullane*, 339 U.S. 306, 317-18
28 (1950)).

CONCLUSION

19. It is my opinion that, if and when the court certifies the Andrews Class, the class definition is objectively defined which will allow an effective due process notice program to be designed.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 22nd of August, 2016.



Shannon R. Wheatman

CERTIFICATE OF SERVICE

I, Robert J. Nelson, hereby certify that on August 22, 2016, I electronically filed Plaintiffs' **DECLARATION OF SHANNON R. WHEATMAN, PH.D., IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** with the Clerk of the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Robert J. Nelson
Robert J. Nelson